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2 NOT FOR PUBLICATION

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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Darrell Floyd, et al.,

10 Plaintiffs,

11 v.

12 IDS Property Casualty Insurance Company,
13 et al.,

14 Defendants.

No. CV-18-00400-PHX-DJH

ORDER

15 Before the Court is Defendant IDS Property Casualty Insurance Company's¹
16 ("IDS") Motion in Limine (Doc. 49) to which Plaintiffs filed a Response (Doc. 55).

17 **I. LEGAL STANDARD**

18 "Although the Federal Rules of Evidence do not explicitly authorize in limine
19 rulings, the practice has developed pursuant to the district court's inherent authority to
20 manage the course of trials." *Luce v. United States*, 469 U.S. 38, 40 n.4 (1984). The Ninth
21 Circuit has explained that motions in limine "allow parties to resolve evidentiary disputes
22 ahead of trial, without first having to present potentially prejudicial evidence in front of a
23 jury." *Brodit v. Cabra*, 350 F.3d 985, 1004–05 (9th Cir. 2003) (citations omitted).
24 Generally, motions in limine that seek exclusion of broad and unspecific categories of
25 evidence are disfavored. *See Sperberg v. Goodyear Tire and Rubber Co.*, 519 F.2d 708,
26 712 (6th Cir. 1975). Motions in limine are "entirely within the discretion of the Court."
27 *Jaynes Corp. v. American Safety Indem. Co.*, 2014 WL 1154180, at *1 (D. Nev. March 20,

28 ¹ IDS is the only named Defendant in this action. The other defendants are fictitious individuals, partnerships, or corporations.

1 2014) (citing *Luce*, 469 U.S. at 41–42). Moreover, “[a] motion in limine is not the proper
2 vehicle for seeking a dispositive ruling on a claim, particularly after the deadline for filing
3 such motions has pass.” *Hana Fin., Inc. v. Hana Bank*, 735 F.3d 1158, 1162 (9th Cir.
4 2013) (citing *Dubner v. City & Cnty. of S.F.*, 266 F.3d 959, 968 (9th Cir. 2001), *aff’d*, 574
5 U.S. 418 (2015)).

6 Motions in limine are “provisional” in nature. *Goodman v. Las Vegas Metro. Police*
7 *Dep’t*, 963 F. Supp. 2d 1036 (D. Nev. 2013), *aff’d in part, rev’d in part, and dismissed in*
8 *part on other grounds*, 613 F. App’x 610 (9th Cir. 2015). The Court issues its rulings on
9 motions in limine based on the record currently before it. Therefore, rulings on such
10 motions “are not binding on the trial judge [who] may always change his [or her] mind
11 during the course of a trial.” *Id.* (quoting *Ohler v. United States*, 529 U.S. 753, 758 n.3
12 (2000) (noting that in limine rulings are always subject to change, especially if the evidence
13 unfolds in an unanticipated manner)). “Denial of a motion in limine does not necessarily
14 mean that all evidence contemplated by the motion will be admitted to trial. Denial merely
15 means that without the context of trial, the court is unable to determine whether the
16 evidence in question should be excluded.” *Id.* (quoting *Ind. Ins. Co. v. Gen. Elec. Co.*, 326
17 F. Supp. 2d 844, 846 (N.D. Ohio 2004)).

18 **II. DISCUSSION**

19 In this Motion in Limine, IDS seeks an order precluding Plaintiffs’ liability expert,
20 Mr. Flood, from offering testimony regarding: (1) opinions that were not disclosed in his
21 expert report, (2) whether Plaintiffs’ medical care was reasonable and necessary and what
22 the value of Plaintiffs’ claim is, (3) the relevant standards in Arizona regarding insurance
23 claim handling, and (4) the motives and intent of individual IDS representatives.

24 **A. Opinions Not Included in Mr. Flood’s Expert Report**

25 IDS asks this Court to limit the testimony of Mr. Flood to the content of his Federal
26 Rule of Civil Procedure (“Rule”) 26(a)(2)(B) report. Rule 26 requires expert reports to
27 contain “a complete statement of all opinions the witness will express and the basis and
28 reasons for them.” Fed. R. Civ. P. 26(a)(2)(B)(i). Rule 37(c)(1) generally forbids the use

1 at trial of any information that is not properly disclosed, unless it is substantially justified
2 or harmless. Fed. R. Civ. P. 37(c)(1); *Goodman v. Staples The Office Superstore, LLC*,
3 644 F.3d 817, 827 (9th Cir. 2011). Plaintiffs generally agree that experts may not offer
4 new opinions beyond the scope of their reports; however, Plaintiffs note that IDS has not
5 identified any undisclosed opinions that it wishes to preclude and therefore they are unable
6 to address IDS's concerns. The Court agrees.

7 IDS has not asked this Court to rule on the admissibility of any particular statement
8 or subject of testimony. It is unclear to this Court what statements from Plaintiffs' expert
9 IDS seeks to bar. To the extent IDS seeks a broad ruling precluding Dr. Flood from
10 testifying beyond a dry recitation of his report, its request is denied. *See Harrelson v.*
11 *Dupnik*, 2014 WL 2510530, at *4 (D. Ariz. Mar. 12, 2014) (finding that Rule 26(a)(2)(B)
12 "does not limit an expert's testimony simply to reading his report[;]" rather Rule
13 26(a)(2)(B) "contemplates that the expert will supplement, elaborate upon, [and] explain
14 and subject himself to cross-examination upon his report in his oral testimony.") (internal
15 quotation and citation omitted), *report and recommendation adopted as modified*, 2014
16 WL 2510569 (D. Ariz. June 4, 2014). However, IDS may raise objections during trial, and
17 the Court will issue rulings as appropriate.

18 **B. Opinions Regarding Reasonable and Necessary Medical Care and Value**
19 **of Plaintiffs' Injury Claim**

20 IDS also seeks to exclude Mr. Flood's opinions regarding the reasonableness of
21 necessity of Plaintiffs' medical care and the value of Plaintiffs' claim. IDS argues that
22 "[t]he value of a bodily injury claim, including what medical expenses may be casually
23 [sic] related and what general damages should be awarded, are peculiarly within the
24 province of juries." (Doc. 49 at 2). IDS further argues that "Mr. Flood is not a medical
25 expert, and has no basis for providing opinion evidence that will help a jury determine what
26 portion of Plaintiff's medical expenses are reasonable and necessary as a result of the
27 subject accident." (*Id.* at 3). Plaintiffs contend that they "do not intend for Mr. Flood,
28 their liability expert, to testify as a medical expert regarding the reasonableness or necessity

1 of medical treatment.” (Doc. 55 at 2). As IDS did not identify a specific statement or
2 opinion by Mr. Flood that is outside his expertise, the Court finds that at this time, this
3 request is too speculative and vague. IDS can object to specific testimony or evidence at
4 the appropriate time during trial.

5 **C. Opinions Regarding Arizona Law on Good Faith Claims Handling**

6 IDS also seeks to exclude Mr. Flood’s opinions regarding the relevant standards in
7 Arizona regarding insurance claim handling. IDS argues that “[i]t is the job of this Court,
8 not Plaintiff’s expert, to tell the jury what Arizona law requires of insurance companies[,
9 and] [a]ny such opinions from Plaintiff’s expert are not helpful to the jury and should be
10 excluded.” (Doc. 49 at 3). Plaintiffs contend that “Mr. Flood is competent and expected
11 to testify, as has been disclosed, regarding his knowledge, training and experience of
12 industry standards, including claims in Arizona, and his opinions that [IDS] deviated from
13 those standards in this case.” (Doc. 55 at 3).

14 Expert evidence is admissible under Federal Rule of Evidence (“Evidence Rule”)
15 702 if the expert’s “specialized knowledge will assist the trier of fact to understand the
16 evidence or to determine a fact in issue.” Fed. R. Evid. 702. Accordingly, courts generally
17 hold that an insurance claims handling expert in a bad faith case may testify as to whether
18 the insurer’s conduct was reasonable based on industry practices and norms. *See, e.g.,*
19 *Hanger v. Provident Life & Acc. Ins. Co.*, 373 F.3d 998, 1016 (9th Cir. 2004) (finding
20 that an expert did not improperly embrace the issue of bad faith under Rule 704(a) by
21 testifying as to the relevant industry standards and the defendant’s failure to comport with
22 these standards); *Fidelity Nat’l Financial, Inc. v. Nat’l Union Fire Ins. Co. of Pittsburgh*,
23 PA, 2014 WL 1286392, at *10 (S.D. Cal. Mar. 28, 2014) (“[A claims handling] expert can
24 inform the jury about the industry standards based on his experience and knowledge of the
25 insurance industry.”); *Home Ins. Co. v. Gates McDonald & Co.*, 2004 WL 5486631, at *6
26 (C.D. Cal. Feb. 9, 2004) (“[N]othing prevents experts from testifying on whether conduct
27 by an insurer was reasonably prudent in light of the insurer’s duties to its insured.”).

28 Again, IDS has not asked this Court to rule on the admissibility of any particular

1 statement or opinion. To the extent IDS seeks a broad ruling precluding Mr. Flood from
2 testifying to the relevant standards in Arizona regarding insurance claim handling, its
3 request is denied. The Court will not preclude Mr. Flood from testifying regarding the
4 relevant industry standards for Arizona insurance claim handling or describing how IDS's
5 procedures deviated from these standards. However, IDS may raise objections during trial,
6 and the Court will issue rulings as appropriate.

7 **D. Opinions Regarding the Intent and Motives of IDS Representatives**

8 Finally, IDS argues that Mr. Flood should be precluded from testifying to the intent
9 and motives of IDS's representatives because such testimony would be unhelpful to the
10 jury. (Doc. 49 at 3). Plaintiffs contend that Mr. Flood will not testify regarding the motives
11 and intent of individual IDS representatives. (Doc. 55 at 3). Accordingly, as IDS does not
12 identify a particular statement or opinion that should be precluded and Plaintiffs represent
13 that Mr. Flood will not testify regarding the intent or motives of individual IDS
14 representatives, the Court denies IDS's request. However, IDS may raise objections during
15 trial, and the Court will issue rulings as appropriate.

16 **III. FINAL PRETRIAL CONFERENCE**

17 The Court has reviewed the parties' Joint Proposed Final Pretrial Order (Doc. 50-1)
18 and prior to the Final Pretrial Conference, set for November 12, 2019, at 3:00 p.m., the
19 parties shall meet and confer regarding their availability for a 4-5 day trial in December
20 2019 or January 2020. However, the parties should be aware that the Court is unavailable
21 December 9th-11th, 20th, and 23rd-26th. Additionally, the parties shall be prepared to
22 discuss whether a referral to a magistrate judge for a settlement conference would be
23 beneficial. Plaintiffs shall also be prepared to discuss the necessity for each identified
24 witness (Doc. 50-1 at 18-20), many of whom appear to be duplicative.

25 Accordingly,


26 **IT IS ORDERED** that Defendant IDS's Motion in Limine (Doc. 49) is **DENIED**.

27 **IT IS FURTHER ORDERED** that the parties shall meet and confer prior to the
28 Final Pretrial Settlement Conference regarding their available trial dates for December

1 2019 and January 2020 and shall be prepared to indicate whether a referral to a magistrate
2 judge for a settlement conference would be beneficial.

3 **IT IS FINALLY ORDERED** that Plaintiffs shall be prepared to discuss at the Final
4 Pretrial Conference the expected testimony and necessity of each identified witness.

5 Dated this 30th day of October, 2019.

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8 Honorable Diane J. Humetewa
9 United States District Judge
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